

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

BARBARA STOVER,

Plaintiff *Pro Se*,

v.

FREEDOM HEALTH CARE, INC.

Defendant.

Civ. No. 13-119 (WJM)

OPINION

WILLIAM J. MARTINI, U.S.D.J.:

The Court will now dismiss the Plaintiff's Amended Complaint *sua sponte* for lack of subject matter jurisdiction. The facts of this case are as follows:

Plaintiff *pro se* Barbara Stover, a resident of New Jersey, sued her former employer Freedom Home Healthcare, Inc. ("Freedom"), an entity which appears to be based in New Jersey, for monetary damages. Stover was a live-in home health care worker who did not drive. During the night of May 2, 2012, Stover began to experience pain and bleeding. She called Freedom for an employee to relieve her of her duties, but Freedom did not send relief until the next day.

The relieving health care worker arrived in a Freedom vehicle driven by a second Freedom employee. Stover asked the driver to take her to the hospital. He refused.

Stover was later diagnosed with acute diverticulitis. She has been hospitalized nine times and will require surgery.

The court has a continuing obligation to assess subject matter jurisdiction and may dismiss a suit *sua sponte* at any time for lack of subject matter jurisdiction. *Zambelli Fireworks Mfg. Co., Inc. v. Wood*, 592 F.3d 412, 420 (3d Cir. 2010). The plaintiff has the burden to plead and prove subject matter jurisdiction. *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 935 F. Supp. 2d 666, 734 (S.D.N.Y. 2013).

Plaintiff has not pleaded facts indicating the existence of subject matter jurisdiction. Plaintiff and Defendant both appear to reside in New Jersey and are therefore not diverse parties. Plaintiff also has not plead a federal cause of action.

For the foregoing reasons, Plaintiff's Amended Complaint is hereby dismissed without prejudice. Plaintiff may refile an Amended Complaint setting forth a basis for subject matter jurisdiction within 30 days.

/s/ William J. Martini

WILLIAM J. MARTINI, U.S.D.J.

Dated: December 9, 2013